

In particular, the Department recommends specific action against Respondents Sherco, Carlisle, and Malek, including imposition of appropriate fines.

Service of process is pursuant to Mont. Code Ann. § 33-1-314.

REASONS FOR ACTION

There is probable cause to believe that the following facts, if true, justify and support such specific action. Furthermore, there is reason to believe that the following facts will be proven true and, therefore, justify and support immediate issuance of an order requiring Respondents to cease and desist their activities in violation of the Insurance Code.

ALLEGATIONS OF FACT

1. Respondent Sherco offers comprehensive roof repair and replacement services. Sherco is located at 383 Alder St, Highwood, MT 59450. Respondents Malek and Carlisle were agents of Sherco at all times material hereto.
2. As part of its roof repair services, Sherco states that it is fully staffed to handle insurance negotiations.
3. On or about September, 2010, Respondent Carlisle told the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), Sherco only helps facilitate insurance claims and does not require a power of attorney. Respondent Carlisle also indicated he has no problem with going to appraisal when there is a question about damage or necessary repairs, stating "[he] will win."
4. Sherco solicited business in the Lewistown area by going door to door and asking people about roof replacement. They also used signage to garner business.
5. In exchange for its services, the insureds assign Sherco all insurance payments if coverage exists. Contractual language calls for all checks from the insurance company to be

issued jointly to the insured and to Sherco. The contract between the homeowner and Sherco triggers when the terms are accepted by the insurance company and Sherco. The Contract language is as follows: "This agreement does not obligate the homeowner or Sherco Construction in any way unless approved by the insurance company and accepted by [Sherco]."

6. Sherco maintains that it works with the homeowner's insurance to get the correct repair work done for a fair price. If Sherco's estimate is higher than the insurance company's estimate, Sherco then works with the company to arrive at a fair price.

7. No price is set until after Sherco and the insurance company meet and establish what the insurance company will pay. The contract language is as follows:

When the "agreed Price" is determined it shall become the final contract price of \$ _____ and homeowner authorizes SHERCO CONSTRUCTION to obtain labor and material in accordance with the "agreed price" and the specifications set out herein...

8. Sherco works on behalf of the homeowner to obtain the homeowner's wishes as to the scope of damages and repairs.

9. Sherco suggests to homeowners to go to appraisal when the homeowner feels the insurance company is not covering the claim adequately for the damages the homeowner has incurred.

10. Sherco Construction is not licensed by the state of Montana to transact insurance business in any capacity. Respondents Carlisle and Malek are not licensed to perform adjusting or insurance consulting in the state of Montana.

CONCLUSIONS OF LAW

The Commissioner has jurisdiction over this matter pursuant to Mont. Code Ann. § 33-1-101, *et seq.*

1. Mont. Code Ann. § 33-17-102(9) defines “Individual” as a natural person.
2. Respondents Carlisle and Malek are “Individual[s]” as defined by Mont. Code Ann. § 33-17-102(9).
3. Mont. Code Ann. § 33-17-102(19) defines “Person” as an individual or business entity and Mont. Code Ann. § 33-1-202(3) defines “Person” as an individual, insurer, company, association, organization, partnership, business trust, corporation, or any other legal entity.
4. Respondents Sherco Construction, Carlisle, and Malek are “Person[s]” as defined by Mont. Code Ann. §§ 33-17-102(19) and 33-1-202(3).
5. Mont. Code Ann. § 33-17-102(20) defines “Public adjuster” as an adjuster employed by and representing the interest of the insured.
6. Respondents Carlisle and Malek are “Public adjuster[s]” as defined by Mont. Code Ann. § 33-15-102(20) because they represent the interest of the insured during the claims process and accept an assignment of insurance proceeds for these services.
7. Pursuant to Mont. Code Ann. § 33-17-301, an individual may not act as or purport to be an adjuster unless licensed by the Commissioner.
8. Respondents Carlisle and Malek violated Mont. Code Ann. § 33-17-301 by acting as unlicensed public adjusters on behalf of Sherco Construction.
9. Mont. Code Ann. § 33-17-102(6) defines “Consultant” as an individual who makes recommendations or gives advice regarding an insurance policy, for a fee.
10. Respondents Carlisle and Malek are “Consultant[s]” as defined by Mont. Code Ann. § 33-17-102(9) because they recommended that insureds file insurance claims, suggested appraisal, and collected insurance proceeds for these recommendations.

11. Pursuant to Mont. Code Ann. § 33-17-502(2), a person may not evaluate any insurance policy or give advice with regard to any insurance policy and receive a fee for these services without having a consultant license.

12. Respondents Sherco, Carlisle and Malek violated Mont. Code Ann. § 33-17-502 by evaluating insurance policies and giving insurance advice to insureds without a consultant's license while collecting insurance proceeds from those policies.

PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Montana insurance consumers to:

1. immediately issue a cease and desist order barring Respondents from further violations of the Montana Insurance Code;
2. order Sherco, Carlisle, and Malek to pay an administrative fine in an amount and upon such terms and conditions as supported by the evidence and determined at a hearing of this matter;
3. take such other actions which may be in the public interest and necessary and appropriate for the protection of Montana insurance consumers.

RELIEF REQUESTED

WHEREFORE, the Department seeks the following relief:

1. pursuant to Mont. Code Ann. § 33-1-317, imposition of a fine not to exceed \$5,000 for each violation of the Insurance Code;
2. a finding that all sanctions and remedies detailed and described here are in the public interest and necessary for the protection of Montana insurance consumers;

3. pursuant to Mont. Code Ann. § 33-1-318, immediate issuance of an Order to cease and desist from committing further violations of the Insurance Code; and

4. any further action as deemed just and appropriate for the protection of Montana insurance consumers.

STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this notice, present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, Mont. Code Ann. § 2-4-601, et seq., including § 2-4-631. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 15 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Brett O'Neil, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to Mont. Code Ann. § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license. Should you request a hearing on the matters raised in this Notice, a hearing must be held within 45 days of the request, unless postponed by mutual consent of the parties, pursuant to Mont. Code Ann. § 33-1-701 (2).

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state

of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.*, 164 Mont. 139, 520 P.2d 103 (1973), and *Montana Supreme Court Commission on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

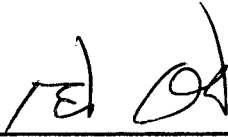
CONTACT WITH COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Brett O'Neil, legal counsel for the Insurance Department, at 840 Helena Avenue, Helena, MT, 59601, 406- 444-0358 or, within Montana, 800-332-6148. If an attorney represents you, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give notice or to advise of your demand for a hearing or informal procedure within 15 days will result in the entry of a default order imposing the disciplinary sanctions against you without further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 30th day of December 2010.



Brett O'Neil
Attorney for Insurance Department

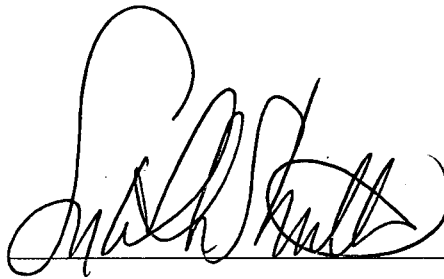
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 30th day of December, 2010, by US mail, certified first-class postage paid, to the following:

Sherco Construction, Inc.
21833 Viking Blvd NE
Wyoming, MN 55092

Tom Carlisle
21833 Viking Blvd NE
Wyoming, MN 55092

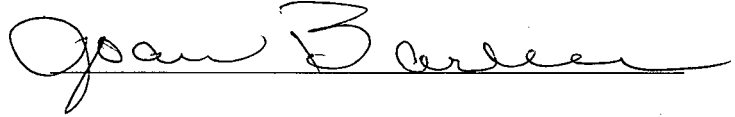
Ty Malek
383 Alder St.
Highwood, MT 59450

A handwritten signature in black ink, appearing to read "Mark H. Smith", is written over a horizontal line.

AMMENDED CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on Will Ballew, Esq., this 3rd day of January, 2011, by fax and U.S. mail to the following:

Will Ballew, Esq.
Spoon, Gordon & Ballew
800 S. 3rd St. W, Suite A
P.O. Box 8869
Missoula, MT 59807-8869

A handwritten signature in cursive script, appearing to read "Joan Ballew", written over a horizontal line.